

## **Memorandum**

**TO:** Rep. Sarah Stevens and Sen. Andy Wells—Co-Chairs of the Joint Legislative Administrative Procedure Oversight Committee

**FROM:** Ellis Hankins (General Counsel for the Town of Spring Lake) and Brady Herman

**DATE:** October 16, 2019

**RE: Response to the Requirements set forth in Section 3 of Session Law 2019-198 (Senate Bill 584) for the Town of Spring Lake, N.C.**

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Attached is the response of the Town of Spring Lake, North Carolina to the requirements set forth in Section 3 of Session Law 2019-198 for towns with a population of 1,000 or more. The attached document contains a list of all the Town's ordinances that create criminal offenses pursuant to G.S. 14-4(a), with brief descriptions of the prohibited conduct. Additionally, here is a [link](#) to Spring Lake's Code of Ordinances for a reference to the ordinances summarized.

If you have any questions about this Memorandum, please contact either Ellis Hankins by email at [hankins@broughlawfirm.com](mailto:hankins@broughlawfirm.com), or Brady Herman at [bherman@broughlawfirm.com](mailto:bherman@broughlawfirm.com), at The Brough Law Firm, tel: (919)-929-3905. Also, please acknowledge receipt of this Memorandum.

## **Chapter 4- Alcoholic Beverages**

Section 4-2—Public consumption of alcoholic beverages: Prohibits consuming alcoholic beverages (1) in any public place or upon any public land, street, sidewalk, alley, or parking lot owned, leased, or maintained by the Town or state within the Town limits; (2) upon the private property of another without the permission of the owner of the premises; (3) in a motor vehicle which is upon any public land or upon the private premises of another without permission from the owner; and (4) in an open container on public streets within the Town. Also prohibits throwing or disposing any alcoholic beverage containers in any public place other than a trash can.

## **Chapter 8- Animals** (Town adopted Cumberland County Animal Control Ordinance)

Section 3-12—Injuring, poisoning, or trapping animals: Prohibits (1) knowingly exposing or giving any poisonous substance to an animal, or (2) setting or exposing an open jaw trap, leg hold trap, or any other trap which would likely cause physical harm or injure an animal.

Section 3-14—Property owner may impound animal: Prohibits knowingly and intentionally, harboring, feeding, or keeping in possession a stray animal which does not belong to him or her, unless (1) within one business day of such animal coming into possession the person notifies Animal Control, and (2) advertises for five consecutive days in a local newspaper that such stray animal is lost.

Section 3-15—Nuisance animals; animals posing a threat to the public: Prohibits keeping any animal which constitutes as nuisance animal as defined in this section or which causes a nuisance as defined in this section of the Town Code.

Section 3-16—Animal fighting and animal fighting paraphernalia: Prohibits: (1) permitting or conducting any dog fights, cock fights, or other combat between animals, or between animal and human; (2) keeping, owning, or possessing, or using materials used or intended to be used in dog fighting or cock fighting.

Section 3-17-- Keeping of wild or exotic animals: Prohibits keeping, selling, trading, or breeding any wild or exotic animal, except as may be licensed by the state Wildlife Recourse Commission.

Section 3-18—Inhumane or cruel treatment: Prohibits (1) performing or carrying out any inhumane or cruel treatment against any animal; or (2) keeping, possessing, owning, maintaining, using, or otherwise exercising dominion and control over any animal by reasons that would constitute or become a health hazard as determined by the County Animal Control Director.

Section 3-19—Control of animals required: Prohibits permitting or negligently allowing any domestic animal or livestock to run at large upon public property in the town limits.

Section 3-22-- Spaying or neutering as condition for adoption of dogs and cats: Prohibits adopting any dog or cat from the animal shelter unless the animal has been surgically sprayed or neutered, or the adopting owner agrees he or she will do so.

Section 3-23-- Keeping of animals; mistreatment, abandonment prohibited: Requires all dogs, cats, and small animals kept as house pets to be properly fed, watered, and protected from the

weather in a manner that would not constitute as a nuisance under the Town Code. Prohibits any person to willfully or negligently (1) torture, injure, or beat an animal without good cause or killing any animal belonging to himself or to another, (2) depriving any animal of food, water, or shelter, or (3) causing any other person to do any of the previous discussed acts. Also prohibits leaving an animal in a motor vehicle under conditions that are dangerous to the animal, abandoning an animal, leaving a dog outdoors tethered unless the keeper or the owner of the dog is holding the tether or is done so in a manner that is safe to the dog and permits access to necessary shelter and water.

Section 3-36—Regulation of dangerous dogs; security and restraint requirements: Prohibits any person to own a dangerous dog as defined in the Town Code except for the following: (1) while on the real property of the owner the dog must be secured and restrained properly; (2) the dog is secured with a leash no longer than 4 feet in length while off the owners property, and muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals; and (3) owner must post a sign on the enclosure housing such dog so as to be in compliance with the Town Code.

Section 3-50—License for dogs and cats required: Prohibits owning, possessing or having under his or her control any dogs or cats over four months of age, without obtaining an annual privilege license for such animal from the Cumberland County Tax Administrator.

Section 3-70—Keeping chickens or rabbits: Prohibits keeping, housing, or confining chickens or rabbits on premises which fail to meet the sanitary standards established by the County Board of Health.

Section 3-72—Grazing animals: Prohibits any owner or keeper to stake or graze any cow, horse, or other animal in any park, cemetery, or other public place or near a public sidewalk.

Section 3-74-- Selling live animals in public rights of way and other public property: Prohibits selling, auctioning, trading, and displaying for commercial purposes or giving away any live animal within the Town right-of-way of any public street within the County.

Section 3-75-- Provisions only applicable within the Town limits: Prohibits (1) stabling or housing within 100 feet of any dwelling, church, or business any horses, mules, ponies, or goats; (2) keeping, housing, or penning at a dwelling or dwelling lot more than ten chickens or rabbits; or (3) tethering or permitting to graze or stand within thirty feet of any wall, or fifty feet of any front door, any cows, horses, or other animals.

## **Chapter 10—Buildings and Building Regulations**

### **Article IV- Minimum Housing Code**

Section 10-112—Procedures for Enforcement; failure to comply with order: After there has been a failure of an owner to comply with an order of the housing/building inspector to repair, alter, and improve, or to vacate, close and remove or demolish the unsafe dwelling, then the housing/building inspector is required to post on the main entrance of any such unsafe dwelling

a placard with the following words: "This building is unfit for human habitation. The use or occupation of this building for human habitation is prohibited and unlawful." Occupation or use of a building so posted is a violation of this article and shall constitute a misdemeanor.

Section 10-115—Violations; penalty: Prohibits any owner of any unsafe dwelling to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close, and remove or demolish the same, upon order of the housing/building inspector, within the time specified in such order, and each day that such failure, neglect, or refusal to comply with such order continues, it shall constitute as a separate and distinct offense and punishable pursuant to criminal and civil penalties.

### **Article V- Mobile Homes and Mobile Home Parks**

Section 10-180—Permits Required; site plan compliance: Prohibits operating any manufactured home park unless the owner, supervisor or other responsible person in charge of the manufactured home park, upon approval by the Town Board, complies with the site plan and other requirements as set forth and designated in the Town Code and obtains a valid permit from the Town's director of inspections.

Section 10-203—Parking of mobile home structures in certain places prohibited: Prohibits manufactured home structures within the town limits except in those districts designated by zoning for such location.

### **Article VII- Unsafe Building Code**

Section 10-284—Nuisance Declared: Requires all unsafe buildings declared as a public nuisance to be repaired, vacated or demolished as set forth in G.S. 160A-393. Unsafe buildings that are public nuisances are defined as the following: (1) those buildings which have parts thereof which are so attached that they may fall and injure members of the public or damage public or private property; (2) those buildings which because of their condition are unsanitary or unsafe to the public; or (3) those buildings which are especially liable to fire including, but not limited to, those which are unoccupied and are not adequately secured against entry by unauthorized persons.

Section 10-287—Violations; unlawful to disregard notices or orders: Prohibits an occupant to fail to vacate an unsafe building or structure after being given an order pursuant to G.S. 160A-429 and the Town Code.

## **Chapter 12- Businesses**

### **Article I- In General**

Section 12-7—Conducting business without license prohibited: Prohibits any person to engage in a business within the Town upon which a privilege license tax is imposed by this chapter, without having paid the appropriate license tax.

Section 12-8—Application for license; false statements prohibited: Requires every person who desires to obtain a license for the privilege of engaging in businesses within the Town must submit an application in writing to the tax collector. Prohibits willfully making a false statement on a license application.

Section 12-9—Issuance of license: A license is required and must be issued by the tax collector for the privilege of conducting a business and is only valid for the business conducted at the place and by the licensee named therein.

Section 12-13—Posting of license: Any person who obtains a license for the privilege of conducting business within the Town must post his or her license conspicuously in the place of the business licensed. If he has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials. If a machine is licensed, the license must be affixed to the machine.

Section 12-21—Enforcement of Chapter: Conducting business within the Town without having paid the license privilege tax imposed by this chapter, or without a valid license issued pursuant to this chapter, or without posting a license pursuant to section 12-13 or having violated any section of this chapter is a misdemeanor.

## **Article II- Massage Parlors; Health Salons**

Section 12-78—Licensing of massage business operators: Prohibits operating a massage business as defined in the Town Code unless the owner applies for and receives a privilege license under this section. Every privilege license must be approved by the Town Manager and filled with the Town Clerk. The application must be approved by the Board of Alderman and a \$500.00 licensing fee at which time the tax collector will issue a privilege license.

Section 12-79—Licensing of massagists: Prohibits engaging in the business or profession of massage unless that person first applies for a receives a privilege license as set for in this section of the Town Code. Every privilege license must be approved by the Town Manager and filled with the Town Clerk. The application must be approved by the Board of Alderman and a \$100.00 licensing fee at which time the tax collector will issue a privilege license.

Section 12-80—Employment of licensed persons: Prohibits any person licensed in the previous section to allow or permit any person to massage or treat a person unless the person giving the massage or treatment has complied with all of the requirements in the previous subsections, including periodic examinations by a licensed physician.

Section 12-81—Posting of licenses: Every massagist is required to post the license required under this chapter in his or her work area. Every person licensed under the 12-78 and 12-79 must display the license in a prominent place.

Section 12-111—Massage by a person of opposite sex prohibited: Prohibits any person engaging in the business, trade or profession of massage, or any officer or employee of such person, to engage in massaging a person of the sex opposite to that of the person doing the massaging.

Section 12-112—Massage of private parts prohibited: Prohibits any person to massage or to offer to massage the private parts of another for hire.

Section 12-113—Minors; patronage and employment: Prohibits any person licensed as a masseur under section 12-78 and 12-79 to (1) treat, or condone the massage treatment of any minor under the age of 18 unless a written order from a licensed doctor, chiropractor, or registered physical therapist; or (2) employ any person under the age of 18 in the operation of a massage business.

Section 12-114—Advertising by unlicensed massage parlor: Prohibits any person engaging in the business, trade, or profession of massage or any officer or employee of such person to expose to the public view any advertisement of the operation of a massage business on any premise within the Town without being licensed under sections 12-78 and 12-79.

## **Chapter 14- Emergency Management**

Section 14-32—Curfew and restricting access to areas: A curfew may be imposed upon a proclamation by the Town Mayor prohibiting the public to certain areas and during certain periods of time by anyone who is not exempted under the Town Code.

Section 14-33—Restrictions on possession, consumption, or transfer of alcoholic beverages: The proclamation may prohibit the possession or consumption of any alcoholic beverages within the area described in the proclamation and may control the transfer of alcoholic beverages by stores who sell them.

Section 14-34—Restrictions on possession, transportation, and transfer of dangerous weapons and substances: The proclamation may prohibit the sale, purchase, transportation or possession on one's own premises of any dangerous weapon or substance as defined in G.S. 14-288.1(2).

Section 14-3—Violation and penalty: It shall be a misdemeanor for any person to violate any of the provisions of this chapter or plans or restrictions issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the emergency response force in the enforcement of the provisions of this chapter or any plan or restriction issued thereunder.

## **Chapter 16- Environment**

### **Article II- Nuisances**

Section 16-23—Prohibitions: Prohibits: (1) the creation or maintenance of a public nuisance as defined and set for in the town code; (2) any person or property owner to create or cause a nuisance to be created; or (3) for the owner or occupant in possession of any lot or parcel within the Town to create a nuisance or otherwise allow, permit, or suffer a nuisance to be created.

Section 16-24—Open storage: Prohibits (1) outdoor open storage to be allowed between any front of a building and the right-of-way side of the street on which it is addressed; (2) open storage in carports or garages without permanent doors; and (3) open storage in commercial and nonresidential uses and the outdoor storage of items not related to the property's use in relation to zoning approval or as allowed by the Town zoning ordinance.

## **Chapter 20- Flood Damage Prevention**

Section 20-5—Penalties for violation: Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor.

Section 20-75—Corrective procedures; failure to comply with order: When the floodplain administrator finds violations of applicable state and local laws, he or she must notify the owner or occupant of the building of the violation. The owner or occupant is required immediately remedy each of the violations of law cited in such notification. If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the board of aldermen following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

## **Chapter 26- Offenses and Miscellaneous Provisions**

### **Article I- In General**

Section 26-1—Discharge of firearms; duty of chief of police: Prohibits (1) shooting or discharging within the corporate limits of the Town any gun or pistol, air rifle, compressed air rifle, or other similar device unless when used in defense of person or property or pursuant to the lawful directions of law enforcement; and (2) pointing any gun, pistol, rifle, or other similar device toward any person or group of people either for fun or otherwise, regardless if such gun or pistol is loaded or not.

Section 26-2—Posting of bills upon private or public property: Prohibits sticking, painting, writing, or putting upon any house, fence, wall, post, pavement, or upon any property owned by any person or by the Town, any printed, written, or painted or other advertisement, bill, sign, or poster, without first having obtained permission of the owner of the property or received permission from the Town Clerk.

Section 26-14—Prohibited activity on or within 1,000 feet of a school: Prohibits any person or group of people to move about on any school property or to have a parade or march within 1,000 feet of any school or school facility except when allowed pursuant to the express written permission of the superintendent of the schools or a valid permit from the Town.

Section 26-15-- Disruptive activities, members of street-gangs and possession of weapons and explosive devices prohibited: Prohibits (1) any person with the intent to disrupt any school facility or to go upon the property or within 100 feet of the property which disrupts or interferes or clearly

appears to present a clear and present danger that such conduct, act, or actions will disrupt, disturb or threaten the safety and security of students or personnel of the school facility or activity; (2) any member of a street gang who has been validated by law enforcement to go onto any school property; and (3) any person on school property to possesses any form of weapon or other explosive device, without lawful authority or permission to do so.

## **Article II- Drug Paraphernalia**

Section 26-29—Advertisement of drug paraphernalia: Prohibits any person to place in any newspaper or other publication of any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

## **Article III- Curfews for Minors**

Section 26-52—Time limits; exceptions: Prohibits any minor to be or remain upon any public place within the town between 12:00 midnight Friday and 5:00 a.m. on Saturdays or between 12:00 midnight Saturday and 5:00 a.m. on Sundays or between the hours of 11:00 p.m. and 5:00 a.m. of the following morning on Sunday, Monday, Tuesday, Wednesday or Thursday. This provision does not apply to the exceptions as set forth in this section of the Town Code.

Section 26-53—Responsibilities of adults; business establishments: Prohibits (1) any parent, guardian, or other person in charged with care and custody of any minor to allow or permit such minor to be in or upon, or remain in or upon, a public place within the town within the curfew hours set by the previous section; and (2) any person operating a place of business or amusement to allow or permit any minor to be in or upon, or to remain in or upon, any place of business or amusement operated by them within the curfew hours set by the previous section.

Section 26-55—Aiding and abetting: Prohibits an adult, guardian, or parent to allow, permit, encourage, aid or abet a minor to violate the provisions in this article.

Section 26-56—Refusal to take custody: If any guardian or parent refuses to take custody of his minor child found in violation of this article, the officers with custody of said minor must contact the County Department of Social Services and release the minor to that agency, pending further investigation by the police department and the department of social services. The adult will be subject to a criminal citation pursuant to the criminal penalties set forth in the Town Code.

## **Article IV- Alarm Systems**

Section 26-93(d)-- False alarm; failure to pay fee: Prohibits an alarm user to fail to reimburse the Town in accordance with the procedures as set forth in this section of the Town Code for alarm responses by the police department.

Section 26-94—Causing fire alarms prohibited: Prohibits any person to activate a burglary or robbery alarm for the purpose of summoning police when no burglary or robbery, or other crime



dangerous to life, is being committed or attempted on the premises, or otherwise to cause a false alarm.

## **Chapter 30- Peddlers and Solicitors**

Section 30-4-- Soliciting and begging in private residences and on streets and sidewalks declared nuisance; permits: Prohibits (1) going in or upon, or permitting his representative to go in or upon, any public property, private residence or premises in the Town as a solicitor, beggar, peddler, or transient vendor of merchandise without permission from the private residence or having first secured a permit from the Town as provided in this section; (2) panhandling or soliciting citizens and others on the streets and sidewalks of the Town or on private property by persons, solicitors, peddlers, and transient vendors of merchandise and stopping persons thereon without having been invited so to do by such person for the purpose of soliciting funds, or services; (3) prohibits soliciting on public or private property after 9:00 p.m. or before 9:00 a.m.; and (4) standing, sitting, or loitering in any street or highway, including shoulder and median strip, but excluding sidewalks, and to stop or attempt to stop vehicles for the purpose of soliciting or accepting money, food, or employment from the occupants of the vehicles.

Section 30-8—Prohibition of itinerant merchants: Prohibits any person to go in or upon, or permit his representative to go in or upon, any public property, private residence or premises in the town as an itinerant merchant. This provision does not apply to specialty markets or specialty market vendors as defined by this chapter or the exemptions as set forth in this section of the Town Code.

Section 30-10—Display of Permit: Requires each permit issued under this chapter to be carried at all times by the permittee when he or she is engaged in soliciting within the Town. Prohibits such permittee to fail or refuse to exhibit such permit whenever required to do so by any citizen of the Town or police officer.

## **Chapter 34- Streets, Sidewalks, other Public Places and Driveways**

### **Article I- In General**

Section 34-1—Machine or tool likely to injure streets prohibited: Prohibits dragging or running, or causing to be dragged or run, any harrow or other machine, engine, or tool upon any asphalt or other permanently paved street of the Town in a way to injure or cut the surface thereof.

Section 34-2—Sidewalk construction; permit required: Prohibits building or constructing any sidewalk within the Town without a valid permit issue by the Town.

Section 34-3—Playing on streets, riding bicycles on sidewalks outside residential zone prohibited: Prohibits (1) playing, catching, or batting any ball on any streets within the town, and (2) riding a bicycle on any sidewalk located outside of a residential zone.

### **Article II- Excavations, Openings**

Section 34-25—Opening or digging in streets and sidewalks; permit required: Prohibits making any excavation or opening or digging any ditch, trench, tunnel, or hole in, along, or across any street, sidewalk, or other public place for the purpose of laying pipes or for any other purpose, unless a written permit is issued by the Town.

Section 34-27—Excavation area to be protected: Prohibits any person who obtains a permit under this Chapter to do any excavation of any kind that may create or cause a dangerous condition to any street, alley-way, or sidewalk within the Town, without placing proper warnings or guard rails sufficient to warn the public of excavation work, and to protect persons from injuries on account of the same.

Section 34-28—Openings to be filled; surface replaced: Requires any person making excavations or openings in any public street, sidewalk, or alley to refill such excavation or opening in accordance with the standards and specifications issued by the Town manager. Prohibits neglecting, refusing, or failing to comply with the provisions of this section.

### **Article III- Obstructions and Encroachments**

Section 34-49-- Use of sidewalks for storing or placing rubbish, merchandise, wood or similar obstructions prohibited: Prohibits storing, piling, depositing, erecting, keeping, or placing, or causing to permit the same upon any sidewalk in the Town any rubbish, wood, coal, boxes, dirt, merchandise, shipping case, or other obstructions of any kind.

Section 34-50—Use of sidewalks for display of merchandise: Prohibits placing or setting out for exhibition any goods, wares, or merchandise directly connected with the business transacted by him, on the sidewalk in front of a place of business, store or building owned, controlled or occupied by him.

Section 34-51—Building or remodeling near sidewalk; passageway to be constructed: Requires before building or remodeling at any place where the building is in close proximity to a sidewalk, the passageway must be unobstructed so as to leave the sidewalk unobstructed and provide safe and easy passage.

Section 34-52—Erecting or repairing wooden sheds or awnings over sidewalk prohibited: Prohibits erecting or repairing over any sidewalk or street any wooden shed or awning, or any wooden shed for the support of an awning, or erecting upon any street or sidewalk any post for the support of any awning.

### **Article IV- Street Acceptance and Driveways**

Section 34-95—Permit to construct driveway required: Prohibits constructing a driveway across any public sidewalk or into any street without first having applied for and obtained a permit from the Towns public works director.

Section 34-97—Extension of apron into street: Prohibits extending any driveway apron into the gutter areas or farther into the street than the face of the curb, or if there is no gutter and/or curb existing within the street right-of-way, the driveway apron must extend to the existing asphalt.

### **Article V- Moving Buildings**

Section 34-120- Application and bond required: Prohibits any building or structure moved from the outside to inside the town limits, or from one place to another within the town limits, without prior approval from the Town Board. Requires an application and bond to be filled and paid to the building inspector and obtain a permit before moving any building.

Section 34-122—Time permitted on streets: Prohibits any building for which a removal permit has been issued to remain on any street or sidewalk for more than 48 hours.

### **Article VI- Parades and Demonstrations**

Section 34-148—Permit required: Prohibits engaging in, participating in, aiding, forming, or starting any parade or demonstration unless a valid permit has been obtained from the chief of police.

Section 34-151—Prohibited activities; standards applicable to parades: Prohibits: (1) possessing firearms or dangerous weapons of any kind, either exposed or concealed, by any participant or affiliate of the parade upon any street, sidewalk, or other public place within 500 feet of the parade; (2) hand-carried sign or poster transported in such parade with a greater density than eight ply 0.030 thickness cardboard; (3) support for such signs or posters that are metallic substance or thicker than one by three-fourth inches; and (4) unreasonably hampering, obstructing, impeding or interfering with any parade assembly or with any person, vehicle, or animal participating in a parade.

### **Chapter 36- Subdivisions**

Section 36-160—Penalty: From and after the effective date of the ordinance from which this chapter is derived, any person who, being the owner, or agent of the owner, of land located within the platting jurisdiction of this chapter, thereafter transfers or sells such land by reference to a plat showing a subdivision of land before such plat has been properly approved under this chapter and recorded in the office of the register of deeds, will be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring will not be exempt the transaction from such penalties.

### **Chapter 40- Utilities**

Section 40-560—Non-stormwater discharge controls: Prohibits causing or allowing the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the

waters of the state, or up on the land in such proximity to the same, any fluid, solid, gas, or other substance, other than stormwater.

Section 40-562—Nuisances prohibited; enumeration: Prohibits any of the enumerated and described conditions set forth and designated in this section of the Town Code declared to constitute detriment, danger, and hazard to the health, safety, morals, and general welfare of the town and are found, deemed, and declared to be public nuisances wherever the same may exist and the creation, maintenance, and failure to abate any nuisances is unlawful.